WISCONSIN SUPREME COURT CALENDAR
AND CASE SYNOPSES
December 2005

This calendar contains cases that originated in the following counties:
Brown
Dane
Milwaukee
Sauk
Walworth

These cases will be heard in the Wisconsin Supreme Court Hearing Room, 231 East Capitol:

THURSDAY, DECEMBER 1, 2005

9:45 a.m.	04AP1358	James E. Vieau v. American Family Mutual Ins. Co.
10:45 a.m.	04AP688	Progressive Northern Ins. Co. v. Edward Hall
1:30 p.m.	03AP3258	Daniel LaCount v. General Casualty Co. of Wisconsin

FRIDAY, DECEMBER 2, 2005

9:45 a.m.	04AP468	Burbank Grease Services, LLC v. Larry Sokolowski
10:45 a.m.	04AP1254	Agnes E. Maciolek v. City of Milwaukee Employes' Retirement System Annuity and Pension Board

TUESDAY, DECEMBER 6, 2005

9:45 a.m.	04AP2022-D	Office of Lawyer Regulation v. Michael G. Artery
10:45 a.m.	04AP2035-CR	State v. Dale L. Smith
1:30 p.m.	03AP2662-CR	State v. James E. Brown

TUESDAY, DECEMBER 13, 2005

9:45 a.m.	05AP239-AC	Sherman D. Raschein v. Melissa S. Frey
10:45 a.m.	03AP2555	Michael J. Landwehr v. Bernadette N. Landwehr
1:30 p.m.	04AP319	Northwest Airlines, Inc. v. Wis. Dept. of Revenue

In addition to the cases listed above, the court will consider and determine on briefs, without oral argument, the following cases (no background summaries available):

04AP1914-D	Office of Lawyer Regulation v. Mark A. Phillips (Waukesha lawyer)
04AP2374-D	Office of Lawyer Regulation v. Mark E. Converse (Green Bay lawyer)

WISCONSIN SUPREME COURT
THURSDAY, DECEMBER 1, 2005
9:45 a.m.

04AP1358 James E. Vieau v. American Family Mutual Insurance Company

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which affirmed a ruling of the Brown County Circuit Court, Judge Donald R. Zuidmulder presiding.

Like the other two cases the Supreme Court will hear today, this case involves a question of insurance coverage for people involved in collisions with underinsured or uninsured motorists. The plaintiff in this case, James E. Vieau, was a passenger and was seriously injured in a one-car wreck. The driver did not have enough insurance to cover Vieau's injuries. The Court is expected to decide whether Vieau's mother's insurance policy covers him in this circumstance.

Here is the background: In early June 2002, Vieau was a passenger in Shane P. Kaczrowski's truck, which Kaczrowski – who allegedly was intoxicated – was driving. Kaczrowski and Vieau were traveling in the Township of Two Rivers in Manitowoc County when Kaczrowski lost control on a curve. The truck crossed the centerline, hit an embankment, flew through the air, and rolled several times.

Vieau suffered head injuries and fractures in his back, arm, and pelvis. At the time his case was filed in the Supreme Court, he had accumulated about $63,000 worth of medical bills. Vieau also contends he has suffered, and will continue to suffer, a loss of income as a result of his permanent injuries.

Kaczrowski was not adequately insured to cover Vieau's claim, but he was not sufficiently underinsured to trigger underinsured motorist coverage for Vieau. Vieau owned his own car and was able to collect some money under his policy but not enough to cover his claim. His effort to collect under his mother's insurance policy with American Family Mutual Insurance Company triggered this case.

At the time of the crash, Vieau was 21 and living with his parents. His mother's insurance policy indicated that it covered relatives as long as the relatives did not own their own cars. Vieau argues that Wisconsin's omnibus insurance statute prohibits insurers from excluding relatives from coverage. Vieau was unsuccessful in his effort to convince the circuit court and Court of Appeals that his mother's policy should provide coverage to him in this circumstance.

The Supreme Court will decide if, in view of the Wisconsin law that prohibits insurers from writing policies that exclude relatives from coverage, Vieau's mother's insurer must cover him.

WISCONSIN SUPREME COURT
THURSDAY, DECEMBER 1, 2005
10:45 a.m.

04AP688 Progressive Northern Insurance Company v. Edward Hall

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which affirmed a ruling of the Milwaukee County Circuit Court, Judge Clare L. Fiorenza presiding.

This case, like the other two the Supreme Court will hear today, focuses on an area of law that frequently generates court cases: insurance coverage for property damage and bodily injury in crashes caused by uninsured motorists. In this case, the Court is expected to decide if, under Wisconsin law[1], insurers may provide different tiers of coverage to occupants in a vehicle involved in a collision with an uninsured driver.

Here is the background: On Jan. 19, 2001, Edward Hall was a passenger in a station wagon driven by his brother, Richard. Another motorist, Angela Phillips, collided with the Hall car. Edward was injured. Phillips did not have insurance.

Edward and Richard both had insurance coverage. Richard, the driver, had a policy through Progressive Northern Insurance Company that provided uninsured motorist coverage of up to $100,000 per person; Edward's policy, through General Casualty Insurance Company, provided up to $500,000 per person.

Both the Progressive and the General Casualty policies contained so-called "other insurance" clauses indicating that their coverage for accidents involving uninsured motorists would only kick in after primary insurance has been tapped.

There was disagreement between the insurance companies as to which insurer was to make the primary payment to cover Edward. Progressive argued that Edward's insurer, General Casualty, must provide coverage. General Casualty, on the other hand, argued that Progressive should be on the hook because its policy unlawfully (according to General Casualty) provided automobile coverage that offered less to occupants of the vehicle than to the named insured.

The circuit court found in favor of General Casualty. Progressive appealed and lost. The Court of Appeals concluded that Progressive's "other insurance" clause was unenforceable and ordered Progressive to pay the first $100,000 in damages.

The Supreme Court will decide which insurer must provide primary insurance coverage to Edward.

[1] Wis. Stat. § 632.32(3)(a)

WISCONSIN SUPREME COURT
THURSDAY, DECEMBER 1, 2005
1:30 p.m.

03AP3258 Daniel J.R. LaCount v. General Casualty Company of Wisconsin

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which reversed a ruling of the Brown County Circuit Court, Judge Mark A. Warpinski presiding.

Like the other two cases that the Supreme Court will hear today, this case focuses on insurance coverage for people injured in crashes involving underinsured and uninsured motorists. This case involves a parent who sponsored his child's driver's license.

Here is the background: On Oct. 15, 1999, Courtney Langer, who was 16 at the time, was driving a vehicle that collided with James Wingfield's van. Wingfield was killed and his passengers were injured. Courtney's passenger, Daniel La Count, who was 18 at the time, was also injured.

Courtney's father, Joseph Langer, sponsored her driver's license. Under state law,[2] Joseph, as sponsor, is liable for damages caused by Courtney even though he was not involved in the crash. Courtney was insured under her father's policy with General Casualty Company of Wisconsin.

The Wingfield family and LaCount separately sought coverage under the Langers' policy. The circuit court concluded that the state's omnibus insurance statute[3] required that insurance policies be interpreted to provide as much coverage as practical. The court therefore ordered that General Casualty pay its $500,000 policy limit twice – once to cover Courtney and again to cover Joseph, whom the court found vicariously liable for the accident.

General Casualty appealed and won. The Court of Appeals concluded that the father and daughter shared a single, $500,000 liability limit.

Now the Supreme Court will take a look at the questions that this case presents and will determine whether the law requires two separate policy limits or one shared limit for a named insured when that person sponsors his/her child's drivers license.

[2] Wis. Stat. § 343.15(2)(b)
[3] Wis. Stat. § 632.32(3)(a)

WISCONSIN SUPREME COURT
FRIDAY, DECEMBER 2, 2005
9:45 a.m.

04AP468 Burbank Grease Services, LLC v. Larry Sokolowski

This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison), which affirmed a ruling of the Dane County Circuit Court, Judge Diane M. Nicks presiding.

This case involves an employee who took customer information and pricing data from his employer, quit his job, and started a competing company. The Supreme Court will determine if Wisconsin law provides a remedy for misappropriation of business information in situations where there is no trade secret involved.

Here is the background: Burbank Grease Services collects and processes used restaurant fry grease, trap grease, and industrial grease. When this case began, Burbank had about 11,250 customers in Wisconsin and several thousand more in neighboring states. Larry Sokolowski worked at Burbank from 1997 to 2001. During that time, he received a code of conduct, which he acknowledged in writing, prohibiting employees from disclosing confidential information. He also received a handbook that prohibited the improper disclosure of business information and indicated that employees might be required to sign non-disclosure agreements (Sokolowski was not asked to do this).

With the knowledge and approval of his employer, Sokolowski sometimes worked at home to meet deadlines. Among the materials that he brought home were a customer list, pricing lists, a spreadsheet showing the amount of grease collected from each customer, and other items of this type.

After Sokolowski resigned his job at Burbank, he went to work for United Liquid, an industrial waste hauler. While United Liquid had the ability to handle grease, it was not engaged in this service on a large scale. Six months after Sokolowski joined the company, United Liquid formed United Grease. Using Burbank customer lists and pricing data – according to Sokolowski's testimony in the trial court – United began soliciting Burbank customers and ultimately acquired about 180 of them.

Burbank sued. The trial court dismissed the claim after concluding that the customer data that Sokolowski had acquired did not amount to a trade secret, because restaurants requiring this service "are pretty readily identifiable."

Burbank appealed and lost, and now has come to the Supreme Court, where it argues that Wisconsin law should be construed to provide protections for businesses whose confidential information is taken, even when that information does not amount to a trade secret. Burbank warns that the Court of Appeals decision, if allowed to stand, will prevent businesses from suing employees who misappropriate confidential information.

Sokolowski, on the other hand, argues that businesses already have a well-established, lawful means of protecting their confidential, but not trade secret, information: require the employee to sign an agreement.

The Supreme Court will determine whether Burbank was properly barred from suing Sokolowski.

WISCONSIN SUPREME COURT
FRIDAY, DECEMBER 2, 2005
10:45 a.m.

04AP1254 Agnes Maciolek v. City of Mwke. Employees' Ret. System Annuity & Pension Board

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which reversed a ruling of the Milwaukee County Circuit Court, Judge Michael D. Guolee presiding.

This case involves a question about the process by which the City of Milwaukee Employees' Retirement System (ERS) makes pension payments to family members of participants in the City pension system. The Supreme Court is expected to take this opportunity to clarify what is required in order to effectuate a 'Washington Will' provision in a marital property agreement.

This provision, named for its state of origin, allows property that otherwise would be subject to probate to pass directly into the marital trust upon the death of either spouse.

Here is the background: In January 1997, Gerald and Agnes Maciolek signed a marital property agreement containing a 'Washington Will' provision that read, in part:

> Upon the death of either of the parties…upon demand and receipt of a copy of this agreement, anyone having possession of any such property shall immediately transfer [it] to the … trustee. The transfer shall occur without further proof of authority or ownership of said property, and without any kind of court proceeding or court order.

After Gerald's death on May 28, 2001, Agnes presented the agreement and requested $27,422.24 in benefits to which her husband was entitled. ERS responded with a packet outlining procedures for obtaining the money. The packet indicated that ERS would honor a 'Washington Will' – but only if accompanied by a certificate obtained from a probate court. Agnes declined to seek this certificate and instead filed the trust agreement with a form in the Register of Deeds office and presented ERS with copies.

ERS declined to accept these documents and the two sides reached an impasse. Agnes sued ERS and won. ERS appealed and the Court of Appeals reversed the lower court, concluding that the benefits were in Gerald's name only and therefore could not be treated as marital property transferable under a 'Wisconsin Will' provision.

Now Agnes has come to the Supreme Court, where she argues that if the Court of Appeals decision is allowed to stand, the concept of easy non-probate transfers of benefits to survivors will no longer exist in Wisconsin. The ERS, on the other hand, points out that a "simple, expedient and economical legislatively-approved procedure" is already available, and the fact that Agnes refused to follow this procedure should not nullify it.

The Supreme Court will clarify the procedures that a surviving spouse must follow in order to claim the deceased's pension benefits.

WISCONSIN SUPREME COURT
TUESDAY, DECEMBER 6, 2005
9:45 a.m.

04AP2022-D Office of Lawyer Regulation v. Michael G. Artery

The Wisconsin Supreme Court is responsible for supervising the practice of law in the state and protecting the public from misconduct by lawyers. Lawyers must follow a code of ethics developed by the Court. When there is an allegation that a lawyer has acted unethically, the Supreme Court's Office of Lawyer Regulation investigates and, if warranted, prosecutes the attorney. A referee – a court-appointed attorney or reserve judge – hears the discipline cases and makes recommendations to the Supreme Court. The lawyer involved in this case practiced law in Walworth County.

This case involves Atty. Michael G. Artery, a 1971 graduate of a Chicago law school who has been licensed to practice law in Illinois since 1972 and in Wisconsin since 1989. He practices in Delavan and has no prior disciplinary history.

The Office of Lawyer Regulation (OLR) filed multiple counts alleging that Artery had engaged in misconduct involving six clients, all of them criminal defendants pursuing appeals, and had engaged in further misconduct by ignoring OLR's requests of him.

In all six cases, Artery was appointed by the State Public Defender's Office to handle appeals for indigent inmates. Each of the six clients experienced trouble working with Artery and ultimately filed grievances with OLR alleging that Artery failed to work on their cases and missed deadlines for filing their appeals. The inmates were doing time for a variety of crimes including homicide, attempted homicide, burglary while armed, robbery, theft, and weapons violations.

The referee's report in this discipline matter indicates that Artery admits the allegations from the clients, but disputes OLR's contention that he failed to respond to its requests for information. Artery alleges he did not receive all of the letters that OLR claims to have sent him – an allegation that the referee concluded was not credible. The referee wrote, in part:

> Discipline is clearly warranted in this matter … [Artery's] failures are serious and had the potential to jeopardize the clients' rights. Individuals should not have to file a grievance with OLR to get the attorney to respond. Even then, when OLR sent out letters, he did not respond. It is highly unusual for OLR to have to personally serve an attorney in order to get that attorney's attention.

The referee recommended that the Supreme Court suspend Artery's law license for 60 days, the sanction that the OLR requested. Artery, on the other hand, argues that his misconduct merits a reprimand.

The Supreme Court will decide what discipline Artery will receive.

WISCONSIN SUPREME COURT
TUESDAY, DECEMBER 6, 2005
10:45 a.m.

04AP2035-CR State v. Dale L. Smith

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which affirmed a ruling of the Milwaukee County Circuit Court, Reserve Judge Russell W. Stamper presiding.

This case involves a man appealing his conviction on the basis that one of the jurors was an employee of the Milwaukee County District Attorney's Office. The Supreme Court will decide if the circuit court's refusal to permit the defense to strike the woman from the jury panel for cause violated the man's right to an impartial jury.

In Wisconsin, citizens are called at random from Department of Transportation lists for jury duty in the county where they reside. At the start of each case, the attorneys and the judge narrow the pool of jurors through a process called *voir dire*.

During *voir dire*, the attorneys use two main types of challenges to eliminate potential jurors from the jury pool. These challenges are "for cause" and "peremptory." If an attorney challenges a juror for cause, the attorney must provide a reason. If the judge agrees, the juror is dismissed. There is no limit to the number of challenges one can make for cause. If an attorney claims a peremptory challenge, the juror is excused and the reason need not be given. The number of peremptory challenges is limited.

In this case, Dale L. Smith was charged with drunk driving as a second offense. During *voir dire*, one of the prospective jurors, Charlotte T., disclosed that she worked as an administrative assistant in the Milwaukee County District Attorney's Office. She indicated that she could be fair and impartial, that she did not know the person prosecuting the case, that her office was located not in the Milwaukee County Courthouse but in the Children's Court Center in Wauwatosa, and that her work did not involve assisting with investigations. Nevertheless, Smith's attorney made a motion to strike her for cause because "she works for the law firm prosecuting the case. Her employer is [District Attorney] Michael McCann." The judge denied the motion.

Smith's attorney used his four peremptory challenges to strike other jurors. Charlotte remained on the jury panel and was one of the 12 jurors who convicted Smith.

Sentenced to 90 days in jail, Smith filed a postconviction motion seeking a new trial on the ground that he did not receive a fair hearing. The motion was denied and he then appealed to the Court of Appeals, arguing that the circuit court committed an error when it refused to allow him to strike Charlotte for cause. The Court of Appeals disagreed and affirmed his conviction.

In the Supreme Court, Smith maintains that it is patently unfair to permit employees of the district attorney who is prosecuting a case to sit on the jury. The State, on the other hand, argues that the Court of Appeals was correct when it upheld the trial court's conclusion that, "The mere fact that a juror works for the prosecuting office…does not in and of itself disqualify the juror from service."

The Supreme Court will decide whether Smith will receive a new trial.

WISCONSIN SUPREME COURT
TUESDAY, DECEMBER 6, 2005
1:30 p.m.

03AP2662-CR State v. James E. Brown

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which affirmed a ruling of the Milwaukee County Circuit Court, Judges M. Joseph Donald and Jeffrey Wagner presiding.

This case stems from the conviction of a 17-year-old on charges that yielded a 25-year prison sentence. The Supreme Court is expected to clarify whether an illiterate defendant who answers a judge's questions with grunts and one-word responses has sufficiently demonstrated his understanding of a plea proceeding.

Here is the background: On Sept. 10, 2001, James E. Brown, who was then 17, was charged with four offenses: armed robbery, first-degree sexual assault, kidnapping, and armed burglary. Three months later, he pleaded guilty to three of the four offenses (the fourth, armed burglary, was dismissed as part of a plea agreement). The court hearing at which he entered his pleas is the subject of this appeal.

There are processes in place to ensure that a defendant who is entering a plea of guilty or no contest fully understands the consequences of such a plea. These processes have been developed through court cases.[4] First, the defendant is given a "plea questionnaire," which s/he reviews with his/her lawyer. Then, the judge conducts a "plea colloquy," a question-and-answer session with the defendant. The plea colloquy is supposed to cover the elements of the offense, the potential penalties, and the rights that the defendant is giving up by entering a plea.

In this case, Brown's lawyer, Peter Earle, advised Judge Jeffrey Wagner that Brown did not know how to read and told the judge that, while he had gone over the plea questionnaire twice with Brown, "it's my belief that it's going to have to be done orally." The judge then conducted a plea colloquy with the defendant, and Brown gave one-word responses, some of which – including the one to a question about whether he was currently under the influence of drugs – were recorded as "ug-huh."

The judge accepted the guilty pleas and sentenced Brown to 25 years' imprisonment followed by 25 years of extended supervision. Brown filed a post-conviction motion arguing that he had not understood. The motion was denied without a hearing and Brown appealed. The Court of Appeals affirmed his convictions after concluding that the plea colloquy was adequate.

In the Supreme Court, Brown argues that his guilty pleas were involuntary because he did not understand the proceedings, and that he should have been given a hearing on his post-conviction motion.

The Supreme Court is expected to clarify what a trial court judge must do in a plea hearing to ensure that a defendant understands the charges, the possible penalties, Truth-in-Sentencing, and the rights s/he is giving up.

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[4] State v. Bangert, 131 Wis. 2d 246, 389 N.W2d 12 (1986)

WISCONSIN SUPREME COURT
TUESDAY, DECEMBER 13, 2005
9:45 a.m.

05AP239-AC Sherman D. Raschein v. Melissa S. Frey

This is a certification from the Wisconsin Court of Appeals, District IV (headquartered in Madison). The Court of Appeals may certify cases that cannot be decided by applying current Wisconsin law. The Wisconsin Supreme Court, as the state's preeminent law-developing court, often accepts such certifications from the Court of Appeals. The case began in Sauk County Circuit Court, Judge Guy Reynolds presiding.

This case involves a child whose foster parents divorced. The Supreme Court is expected to determine the legal rights of the ex-spouse when a foster couple divorces and one half of the couple adopts the foster child.

The Wisconsin Statutes [5] say that a court may grant "reasonable visitation rights" to a "person who has maintained a relationship similar to a parent-child relationship with the child" if the court determines that visitation by the non-parent is in the child's best interest. The Supreme Court has considered in past cases the events that might trigger a non-parent's ability to petition for visitation and has ruled that a non-parent may acquire legal standing after the dissolution of the marriage that produced the child. Now, the Court will consider a case where the triggering event – the divorce – did occur, but where the child in question was not a product of the marriage or adopted during the marriage.

Here is the background: On Aug. 29, 2001, when he was two days old, Dalton was placed in foster care at the home of Sherman Raschein and Melissa Frey. Dalton lived with the couple and their marital child until shortly before Frey filed for divorce in February 2003. During the couple's separation, Dalton alternated between parents on the same schedule as the marital child. The divorce was finalized on Oct. 9, 2003.

Meanwhile, the parental rights of Dalton's biological parents were terminated in July 2003 and Frey filed an adoption petition shortly thereafter. Raschein maintains that he did not file his own adoption petition because Frey assured him in writing that she considered him Dalton's dad. He inferred from this that Frey would allow him continued visitation; however, after the adoption was finalized on Nov. 10, 2003, Frey advised her ex-husband by letter that she would no longer allow Dalton to visit him.

Raschein filed a petition seeking court-ordered visitation. Frey moved to dismiss the petition. The trial court ultimately granted Frey's motion to dismiss the petition without holding a hearing as Raschein had requested. The Court of Appeals certified the case to the Supreme Court.

The Supreme Court will clarify the right of non-parents to seek visitation in cases such as this one.

[5] Wis. Stat. § 767.245(1)

WISCONSIN SUPREME COURT
TUESDAY, DECEMBER 13, 2005
10:45 a.m.

03AP2555 Michael J. Landwehr v. Bernadette N. Landwehr

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee, which affirmed in part, reversed in part and remanded cause for further proceedings on a ruling of the Milwaukee County Circuit Court, Judge William Sosnay presiding.

This case involves a divorced father's petition to increase the time his daughters spend with him. The Supreme Court is expected to analyze a statutory requirement[6] for a placement schedule "that maximizes the amount of time the child may spend with each parent" to determine whether this phrase requires courts to favor equal physical placement of children.

Here is the background: Michael and Bernadette Landwehr divorced in June 2000. At the time, Michael agreed to give Bernadette primary physical placement of their two daughters, then 6 and 3. He was to have the children one evening and one overnight per week, and every other weekend. He also agreed to pay child support of $1,800 per month or 25 percent of his gross income, whichever was larger.

At the time of the divorce, Michael's income was $86,400. Shortly after the divorce, he quit his job and started his own business, which allowed him to reduce his travel and work more flexible hours. He also moved to within a few minutes' drive of his daughters' home.

Although Michael initially maintained his income at its former level, the business suffered some financial setbacks and he cut his salary to $40,000 per year. Business improved substantially during 2002 but Michael did not alter his salary.

In June 2002, Michael filed a motion to reduce his child support and to increase the girls' physical placement with him. The court denied the motion to reduce support, noting that Michael could pay himself more but chose not to. The court increased Michael's placement by 10 overnights during the summer but kept it the same during the school year, reasoning that further changes could disrupt the girls' schedule and affect their school performance. Michael appealed, and the Court of Appeals affirmed.

In the Supreme Court, Michael does not raise the child-support issue but instead focuses on the physical placement question, arguing that the legal requirement for "maximizing placement" requires that he be given equal physical custody. Bernadette, on the other hand, points to another section of the statute[7] that requires the circuit court to presume that maintaining the status quo is in the child's best interest. The Court will analyze the interplay of these two state laws to determine how to balance a presumption in favor of continuity with a presumption in favor of maximizing placement.

[6] Wis. Stat. § 767.24(4) (a) (2)
[7] Wis. Stat. § 767.325 (1) (2)2.b.

WISCONSIN SUPREME COURT
TUESDAY, DECEMBER 13, 2005
1:30 p.m.

04AP319 Northwest Airlines, Inc. v. Wisconsin Department of Revenue

This is a certification from the Wisconsin Court of Appeals, District IV (headquartered in Madison). The Court of Appeals may certify cases that cannot be decided by applying current Wisconsin law. The Wisconsin Supreme Court, as the state's preeminent law-developing court, often accepts such certifications from the Court of Appeals. The case began in Dane County Circuit Court, Judge John C. Albert presiding.

This case centers on tax incentives that the Legislature created for airlines that operate hub facilities out of Wisconsin. The Supreme Court is expected to clarify the extent of the state's power to provide tax incentives to encourage businesses to locate, upgrade, or remain in the state.

Here is the background: In 2001, the Wisconsin Legislature enacted § 70.11(42), which exempted from property taxes any "property owned by an air carrier company that operates a hub facility in this state, if the property is used in the operation of the air carrier company." Midwest Express and Air Wisconsin both benefited from this provision in 2001 and 2002. Northwest Airlines, however, did not qualify and was assessed more than $1.5 million in excise taxes in each of those years.

Northwest sued the state Department of Revenue (DOR), seeking (1) a re-determination of its tax assessment and (2) a judgment that the law enacted in 2001 violated the commerce clause of the U.S. Constitution (which limits the power of states to discriminate against interstate commerce) and/or the equal protection and uniformity clauses of the Wisconsin Constitution. The circuit court declined to permit a re-determination of the assessment because Northwest did not follow the proper procedures in seeking this review. However, the court did strike down the tax breaks after concluding that they violate the commerce clause of the U.S. Constitution.

Northwest appealed the decision on the reassessment. The DOR and Midwest Airlines cross-appealed, raising the constitutional issues. The Court of Appeals certified the case to the Supreme Court, noting that the resolution of these issues is likely to affect Wisconsin's ability to continue to attract airline services and will have a significant effect on the state's economy. The Court of Appeals further notes that the Supreme Court's decision in this case may have a national impact as other states have enacted tax incentives for air carriers.

The Supreme Court will decide whether the tax incentives that the Legislature enacted to benefit airlines that establish hubs in Wisconsin are constitutional.